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Supreme Court of the United States

No. 287, October Term, 1931

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,

Appellants,

against

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *et al.*,

Appellees.

TERMINAL GRAIN COMPANY, *et al.*,

Appellants,

against

THE UNITED STATES OF AMERICA,

Appellee.

STATEMENT AS TO JURISDICTION BY APPELLANTS, UNDER RULE 12

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WALTER MCFARLAND,
ELMER A. SMITH,
P. F. GAULT,
DOUGLAS F. SMITH,
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August 14, 1931.

Supreme Court of the United States

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,
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against
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *et al.*,
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In support of the jurisdiction of this Court to review the above entitled cause on appeal, appellants respectfully submit the following statement:

A. Statutory Provisions.

U. S. C. Title 28, Section 345 [Section 238 of the Judicial Code as amended by Act of February 13, 1925; c. 229, 43 Stat. 936, 938, paragraph (4)].

U. S. C. Title 28, Sections 41 (28), and 47 (Urgent Deficiencies Act of October 22, 1913; c. 32, 38, Stat. 219, 220).

B. Date of Orders Sought to be Reviewed, and Date of Application for Appeal.

The orders sought to be reviewed herein were entered on July 7, 1931 (R. 843, 845).*

The petition for appeal was presented on July 10, 1931, together with an assignment of errors (R. 847-864), and the order allowing the appeal was entered on the same day (R. 871-875).

Citation was issued on July 10, 1931, and was filed, with acknowledgment of service, on July 25, 1931 (R. 924). An order was entered extending to September 8, 1931, the time within which to docket the case and file the transcript of record on this Court (R. 876-880).

The case was docketed in this Court on August 8, 1931.

C. Nature of Case and Rulings Below.

Appellants, the Atchison, Topeka and Santa Fe Railway Company, *et al.*, common carriers engaged in interstate commerce in the Western District (as defined by

*References are made to the pages in the certified unprinted record, because the record has not been printed as yet.

the appellee, Interstate Commerce Commission, in its order of July 1, 1930, hereinafter referred to) brought suit in the United States District Court for the Northern District of Illinois, Eastern Division, to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission entered on July 1, 1930, as modified by a supplemental order entered on April 10, 1931, prescribing rates on grain and grain products in said Western District, made in a proceeding before the Commission entitled No. 17,000 "Rate Structure Investigation, Part VII, Grain and Grain Products within the Western District, and for Export".

This petition alleged that the effect of the said order was materially to reduce the general level of the rates on grain and grain products in said district and to reduce by not less than $20,000,000 annually the revenues of the petitioners; and that the order of the Commission was void because in excess of the powers conferred upon the Commission by the Interstate Commerce Act and based upon a misinterpretation thereof, and for other reasons set forth in the petition.

Appellants, Terminal Grain Company, *et al.*, brought a similar suit in said District Court wherein it was alleged that the said order was void and that the petitioners would be adversely affected thereby.

Notice of application for a temporary injunction to be heard on the 6th day of May, 1931, was served by the petitioners, The Atchison, Topeka and Santa Fe Railway Company, *et al.* upon the defendants on the 30th day of April, 1931 (R. 561-562). Said applications were heard before a court of three judges organized pur-

suant to the statutory provisions above cited (R. 557-558, 563-564). The District Court by order consolidated the suit of *Terminal Grain Company, et al.* v. *The United States of America,* with the suit of *The Atchison, Topeka and Santa Fe Railway Company, et al.* v. *United States of America and Interstate Commerce Commission.* Thereafter, on the 7th day of July, 1931 (R. 843, 845), the District Court entered orders denying the applications for temporary injunction in said causes, from which orders this appeal has been taken within thirty days from the rendition thereof.

D. Cases Sustaining the Jurisdiction of this Court of this Appeal.

Florida v. *United States,* 282 U. S. 194;
Beaumont, Sour Lake & Western Railway Company v. *United States,* 282 U. S. 74;
Ann Arbor Railroad Company v. *United States,* 281 U. S. 658;
St. Louis & O'Fallon Railway Co. v. *United States,* 279 U. S. 461, 481-2;
Virginian Railway Co. v. *United States,* 272 U. S. 658;
Chicago Junction Case, 264 U. S. 258, 262;
Louisville & Nashville R. R. Co. v. *United States,* 238 U. S. 1;
United States v. *Baltimore & Ohio R. R. Co.,* 225 U. S. 306.

We therefore respectfully submit that this Court has jurisdiction of this appeal.

Respectfully submitted,

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